

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
DARRIEN GOETZENDANNER	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 05-11553-JLT
	)	
LUIS SPENCER, Superintendent,	)	
	)	
Respondent.	)	
_____	)	

**MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS**

The respondent, Luis Spencer, hereby respectfully requests that this Court dismiss the petitioner's petition for a writ of habeas corpus. As grounds for this motion, and as is set forth more fully in the accompanying memorandum of law, the respondent states that the petition must be dismissed as time-barred under 28 U.S.C. § 2244(d), the statute of limitations for federal habeas corpus petitions, which is contained in the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). Moreover, the petition must be dismissed because the claims in the petition have not been exhausted, i.e., the petitioner has not first afforded the Massachusetts state courts the opportunity to pass on his claims.<sup>1</sup>

WHEREFORE, the respondent respectfully requests that this Court dismiss this habeas petition on the grounds that it is time-barred and that the claims asserted in the petition have not

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<sup>1</sup> Respondent's remaining defenses are not addressed here because the running of the statute of limitations and the failure to exhaust the petitioner's claims mandate dismissal of the petition. In the event that this Court declines to dismiss the petition as time-barred and/or unexhausted, the respondent reserves the right, and requests the opportunity, to file an answer and assert all other applicable defenses.

been exhausted in state court.

Respectfully submitted,

LUIS SPENCER,

By his attorneys,

THOMAS F. REILLY  
ATTORNEY GENERAL

/s/ Maura D. McLaughlin  
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Dated: August 24, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon counsel for the petitioner, Darrien Goetzendanner, on August 24, 2005, by depositing the copy in the office depository for collection and delivery by first-class mail, postage pre-paid, addressed as follows: Joseph F. Krowski, Sr., Esq., Law Offices of Joseph F. Krowski, Esq., 30 Cottage Street, Brockton, Massachusetts 02301.

/s/ Maura D. McLaughlin  
Maura D. McLaughlin